

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

MIDWAY MFG. CO.,  
a corporation

Plaintiff,

v.

THE MAGNAVOX COMPANY,  
a corporation

and

SANDERS ASSOCIATES, INC.,  
a corporation

Defendants.

ACTION NO. 74 CIV. 1657 CBM

LETTERS PATENTS NOS. 3,659,284  
3,659,285  
3,728,480  
3,778,058

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, Midway Mfg. Co., for its Complaint against defendants, The Magnavox Company and Sanders Associates, Inc. alleges that:

Parties

1. Plaintiff, Midway Mfg. Co., is a corporation organized and existing under the laws of the State of Illinois, and has its principal place of business at 3750 North River Road, Schiller Park, Illinois.

2. Defendant, The Magnavox Company, is a corporation organized and existing under the laws of the State of Delaware and has its executive offices at 345 Park Avenue, New York City, New York.

3. Defendant, Sanders Associates, Inc., a corporation of the State of Delaware, having an office at Daniel Webster Highway South, Nashua, New Hampshire.

Jurisdiction

4. This is an action for declaratory judgment under 28 U.S.C. §2201 and §2202. Jurisdiction and venue are based on

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28 U.S.C. §§1338 and 1391(c) and the Patent Laws of the United States.

Statement of Claim

5. This action arises from an actual and justiciable controversy now existing between plaintiff and defendants with respect to the following United States Letters Patents and the alleged infringement thereof by plaintiff:

William T. Rusch Patent No. 3,659,284

Ralph H. Baer, et al. Patent No. 3,659,285

Ralph H. Baer . . . . . Patent No. 3,728,480

William T. Rusch Patent No. 3,778,058

Hereinafter, the term "patents" is used to mean either one or a plurality of the above listed patents.

6. Defendant Magnavox has asserted itself to be the exclusive licensee of Sanders Associates, Inc., under the patents with the sole and exclusive right to bring actions in law or equity on the patents.

7. Plaintiff is in the business of manufacturing and selling various types of coin-operated amusement machines and devices. Defendant Magnavox has charged that the manufacture, use and sale of certain of such coin-operated amusement machines and devices constitute infringement of said patents and has threatened plaintiff with suit for infringement of said patents unless plaintiff takes a license and becomes a sub-licensee of defendant Magnavox under said patents.

8. Plaintiff avers that it has not infringed and is not infringing any of said patents.

9. Plaintiff avers that the patents were not duly and legally issued, and further that they are invalid and void for

one or more of the following reasons:

- (a) The alleged inventions of said patents were known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the alleged inventions thereof by the applicants for said patents.
- (b) The alleged inventions of said patents were patented or described in printed publications in this or a foreign country, or in public use in this country, more than one year prior to the filing date of the first application for said patents in the United States disclosing or claiming the alleged inventions.
- (c) The alleged inventions were described in patents granted on applications for patent by others filed in the United States before the alleged invention thereof by the applicants for said patents.
- (d) The applicants for said patents did not themselves invent the subject matter sought to be patented in said patents and were not the original, first and/or joint inventors or discoverers thereof.
- (e) Before the alleged invention by the applicants for said patents, they were made in the United States by others who had not abandoned, suppressed or concealed such alleged inventions.
- (f) The subject matters set forth in said patents so far as it may be original with the applicants for said patents were not sufficient advances in the art to warrant the issuance of patents thereon.
- (g) The differences between the subject matter sought to be patented in each of said patents and the prior art are such that the subject matter as a whole would have been obvious

at the time the purported inventions were made to a person having ordinary skill in the art to which the purported inventions pertain.

(h) The alleged inventions are not described or shown in said patents in such full, clear, concise and exact terms as to enable one skilled in the art to practice the alleged inventions, nor do the patents set forth the best mode contemplated by the applicants for carrying out the alleged inventions.

(i) Said patents do not particularly point out or distinctly claim the alleged inventions.

(j) The applications filed by or on behalf of the applicants for said patents in the United States Patent Office contain less than a full disclosure of their alleged inventions or discoveries.

(k) If said patents are construed to cover coin-operated amusement games and/or devices manufactured and sold by plaintiff, the patents are invalid for want of patentable invention in view of the prior art, knowledge and uses.

(l) Defendants have unlawfully extended its monopoly by obtaining more than one patent on the same, or merely colorable variations of the same, alleged invention.

10. Said patents are invalid, void and unenforceable on the ground of double patenting.

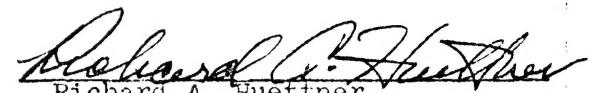
11. Plaintiff, upon information and belief, alleges that by reason of the proceedings in the United States Patent Office during the prosecution of the applications which resulted in the patents, and the admissions and the representations therein made by or on behalf of the applicants for said patents in order to induce the grant of a patent, defendants are estopped to

claim for any of the patents a construction, even if this were otherwise possible, which would cause the patent to cover or include the acts of plaintiff of which defendant Magnavox has complained.

WHEREFORE, plaintiff prays:

- (a) That this Court grant and enter a judgment or decree declaring that said United States Letters Patents are invalid and void and that said patents are not infringed by coin-operated amusement games and devices manufactured, used or sold by plaintiff.
- (b) That this Court enter a judgment or decree declaring that it is the right of plaintiff to make, use or sell the coin-operated amusement games and devices to which defendants' charges of infringement have been directed without any threats or other interference by or from defendants or arising out of the ownership of said patents or any interest therein.
- (c) That defendants, their officers, agents, servants, employees and attorneys be enjoined from charging or asserting that the manufacture, use or sale of the coin-operated devices as manufactured, used or sold by plaintiff is a violation of or an infringement of defendants' rights under said patents.
- (d) That the costs of this action and/or reasonable attorneys fees be assessed against defendants.

(e) That plaintiff be granted such other and further relief as the Court deems just and proper in the premises.



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